KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, L.L.C.
301 North Main, 1600 Epic Center
Wichita, Kansas 67202-4888
(316) 267-0331

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v. No. 97-3179

SONYA EVETTE SINGLETON

Defendant - Appellant

On Appeal from the United States District Court
for the District of Kansas

The Honorable Frank G. Theis
Senior District Judge

D.C. No. 96-10054-05

APPELLANT'S BRIEF

Oral Argument Requested:

John V. Wachtel #08310
KLENDA, MITCHELL,
AUSTERMAN
& ZUERCHER L.L.C.
1600 Epic Center, 301 N. Main
Wichita, KS 7202
(316) 267-0331
Attorneys for Appellant

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT 1

PRIOR APPEALS 1

ISSUES PRESENTED FOR REVIEW 1

STATEMENT OF CASE 2

STATEMENT REGARDING REFERENCES TO RECORD AND TRANSCRIPTS 2

STATEMENT OF THE CASE, THE COURSE OF THE PROCEEDINGS, ETC. 2

STATEMENT OF FACTS 2

SUMMARY OF ARGUMENT 6

ARGUMENT AND AUTHORITIES 6

I. The District Court Erred in Failing to Grant Appellant's Motion to Suppress the Testimony of Napoleon Ransom Douglas 6

II. The District Court Erred in Failing to Grant the Defense Motion for Judgment of Acquittal on the Charge of Conspiracy to Distribute Cocaine Based Upon the Insufficiency of the Evidence 16

III. The District Court Erred in Failing to Grant the Defense Motion for Judgment of Acquittal on the Charges of Conspiracy Money Laundering Based Upon the Insufficiency of the Evidence 21

CONCLUSION 25

STATEMENT REGARDING ORAL ARGUMENT 25

CERTIFICATE OF SERVICE 26

JUDGMENT IN A CRIMINAL CASE (ATTACHMENT) .... A

TABLE OF AUTHORITIES

Cases:

1. *United States v. Griffin*, 7 F.3d 1512, 1516 (10th Cir. 1993)..6

2. *Pierce v. Underrwood*, 487 U.S. 552, 585, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988)............6

3. *United States v. Meinster*, 619 F.2d 1041, 1045 (4th Cir. 1980)....................................8, 13

4. *Golden Door Jewelry v. Lloyds*, 865 F.Supp. 1516, 1523 (S.D. Fla. 1994)......................9, 12

5. *United States v. Dailey*, 759 F.2d 192 (1st Cir. 1985) 10

6. *United States v. Grimes*, 438 F.2d 391 (6th Cir. 1971)...10

7. *United States v. Moody*, 977 F.2d 1420, 1425 (11th Cir. 1992)..11

8. *Hamilton v General Motors Corp.*, 490 F.2d 223 (7th Cir. 1973).......................................11

9. *U.S. v. Cervantes-Pacheco*, 826 F.2d 310 (5th Cir. 1987)..13, 15

10. *Olmstead v. United States*, 277 U.S. 438, 484, 48 S.Ct. 564, 574-75, 73 L.Ed. 944 (1928)..14

11. *United States v. Torres*, 53 F.3d 1129, 1135 (10th Cir. 19950................................16, 18, 21

12. *United States v. Cox*, 292 F.2d 1511, 1513 (10th Cir. 1991) 17, 21

13. *United States v. Bowie,* 892 F.2d 1494, 1497 (10th Circ. 1990) 17, 22, 24

14. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed2d 560 (1979)..................17

15. *United States v. Sanders*, 928 F.2d 940, 944 (10th Cir., *cert. denied*, 501 U.S. 845, 112 S.C. 142, 116 L.Ed.2d 109 (1991) 17

16. *United States v. Staggs*, 881 F.2d 1546, 1550 (10th Cir. 1989) 19

17. *United States v. Angulo-Lopez*, 7 F.3d 1506, 1510 (10th Cir. 1993)...................................19

18. *U.S. v. Savaiano*, 843 F.2d 1280 (10th Cir. 1988) *certiorari* denied 109 S.Ct. 99, 488 U.S. 836, 102 L.Ed.2d 74 ....20, 21

19. *U.S. v. Casto*, 889 F.2d 562 (5th Cir. 1994) *certiorari* denied 110 S.Ct. 1164, 493 U.S. 1092, 107 L.Ed.2d 1067 ....20, 21

20. *U.S. v. Garcia-Emanuel*, 14 F.3d 1469, 1473 (10th Cir. 1994) 22, 24

21 *U.S. v. Levine*, 970 F.2d 681, 684 (10th Cir. 1992)....................22

22. *U.S. v. Ruiz-Castro*, 92 F.3d 1519, 1531 (10th Cir. 1996)....................22, 24

Statutes:

1. Title 18 United States Code Section 3231....................1

2. Title 21 United States Code Section 841(a)(1)....................1, 2

3. Title 18 United States Code Section 1956(a)(1)(B)(1) 1

4. Title 28 United States Code, Section 1291 and Fed. R. App. Proc. 4(b) 1

5. Title 18 United States Code Section 1956(c)(1)....................2

6. Title 18 United States Code, Section 201(c)(2).................... 8

7. Title 18 United States Code, Section 201(d) 8

Other

1. Rule 3.4(b) of the Model Rules of Professional Conduct, Kansas Supreme Court Rules.................... 12

2. J. Richard Johnson, *Paying the Witness*, Criminal Justice, Pages 21-22, Volume 11, Number 4, Winter 1977 9

3. Hazard and Hodes, *The Law of Lawyering: A Handbook of the Model Rules of Professional Conduct 2d*, at 632 12

JURISDICTIONAL STATEMENT

The United States District Court for the District of Kansas has original jurisdiction over offenses against the laws of the United States which occur in that district. Title 18 United States Code , Section 3231. In the District Court the Appellant was charged in a Superseding Indictment with violations of Title 21 United States Code Section 841(a)(1), (Conspiracy to Distribute Cocaine), and Title 18 United States Code Section 1956(a)(1)(B)(1) (Laundering of Monetary Instruments).

This is an appeal as of right from a final judgment and sentence in a criminal case pursuant to Title 28 United States Code, Section 1291 and Fed. R. App. Proc. 4(b). The Appellant was sentenced on May 22, 1997, and judgment was entered on May 22, 1997. (Attachment A.) Notice of Appeal was timely filed on June 5, 1997, and an Amended Notice of Appeal was filed on June 10, 1997.

PRIOR APPEALS

There have been no prior appeals in this matter.

ISSUES PRESENTED FOR REVIEW

I. The District Court Erred in Failing to Grant Appellant's Motion to Suppress the testimony of Napoleon Ransom Douglas.

II. The District Court Erred in Failing to Grant the Defense Motion for Judgment of Acquittal on the Charge of Conspiracy to Distribute Cocaine Based Upon the Insufficiency of the Evidence.

. III. The District Court Erred in Failing to Grant the Defense Motion for Judgment of Acquittal on the Charges of Money Laundering Based Upon the Insufficiency of the Evidence.

STATEMENT OF THE CASE

I. Statement Regarding References to Record and Transcripts

Seven volumes have been transmitted in this appeal. Volume I contains the documents filed with the trial court, and Volumes II through VII contain transcripts of the jury trial and sentencing. Reference to documents contained within Volume I will be to the volume and document number. Reference to the trail and sentencing transcripts will be to the transcript, volume, and the appropriate page number.

II. Statement of the Case, the Course of the Proceedings and the Disposition of the Court Below

The Appellant, Sonya Evette Singleton was charged in the Superseding Indictment with one count of conspiracy to distribute powder cocaine, a Schedule II controlled substance, in violation of Title 21 United States Code Section 841(a)(1), and eight counts of money laundering in violation of Title 18 United States Code Section 1956(c)(1). Ms. Singleton denied all of the allegations and proceeded to trial.

Ms. Singleton's trail began on January 21, 1997. During the trial the United States dismissed one of the money laundering counts, and, on January 27, 1997 the jury returned a verdict finding Ms. Singleton guilty on one count of conspiracy and the remaining counts of money laundering. Ms. Singleton filed a Motion for Judgment of Acquittal on the charges of conspiracy and money laundering. This motion was denied. Senior Judge Frank G. Theis sentenced Ms. Singleton to forty-six months of imprisonment on each count, and he directed that the sentences be served concurrently. **III.**

Statement of Facts

This matter arose out of a continuing investigation commenced in approximately April 1992, by the local Wichita, Kansas police and the United States Department of Revenue into a large number of wire transfers of money in amounts of $1,000.00 or greater. (Tr. Vol. II at 26-33). The investigation eventually led the authorities to what they believed was a ring of Wichitans who were involved in a conspiracy to sell drugs. Western Union was used by the alleged conspirators to send

money from Wichita to California to pay for drugs and for other purposes.

According to the government, some of the men involved in the conspiracy came to Wichita from California to set up shop and sell cocaine. These men recruited local women whom they paid to transfer and pick up currency at various Western Union outlets. Some of the women transported cocaine from California to Wichita. Sonya Singleton was identified as being one of the women who allegedly wired transferred money. (Tr. Vol. II, at 38.)

In the process of identifying the individuals whom the authorities believed were involved in the conspiracy, the authorities discovered one Napoleon Ransom Douglas. At the time Douglas was interviewed by the authorities he was serving a prison sentence in Mississippi for conspiracy to sell cocaine. (Tr. Vol. IV, at 203.) In exchange for promises made by the Assistant United Sates Attorney, Mr. Douglas cooperated with the authorities and provided them with his understanding of how the conspiracies to distribute cocaine and laundering money worked. (Tr. Vol. IV, at 204-206.)

Ultimately Ms. Singleton, Eric, Johnson, Ronald O. McClelland, Napoleon Douglas, Jonathan Wendell Searcy, and Stephanie Coats were charged in a multiple count indictment with conspiracy to distribute powder cocaine and money laundering. (Vol. I, Doc. 124.) Ms. Singleton moved to sever her trial from that of McClelland, Searcy, Douglas, Coats and Johnson. Her motion was sustained, in part, and her trial was severed from the trails of Douglas, McClelland, Searcy and Coats. On January 14, 1997, the United States dismissed all charges against Mr. Johnson, and Ms. Singleton proceeded to trail.

Prior to trial, Ms. Singleton moved to suppress the testimony of Mr. Douglas on the grounds that his testimony had been procured by the United States in violation of Title 18 United States Code, Section 201(c)(2) and Rule 3.4(b) of the Model Rules of Professional Conduct as adopted by the State of Kansas by Kansas Supreme Court Rule 225, and effective from and after March 1, 1988. (Vol. I,

Doc. 135.) On the first day of the trial, and prior to the selection of the jury, Judge Theis denied Ms. Singleton's motion, holding that §201(c)(2) did not apply to the government. (Tr. Vol. II, at 5-6.)

After Detective Jacobs of the Wichita Police Department and Special Agent McCormack of the Internal Revenue Service explained to the jury how the investigation had begun and what the authorities had learned about suspected cocaine sales and money laundering, the government presented the testimony of Mr. Douglas. The only evidence concerning sales of cocaine, and the only testimony which allegedly linked Ms. Singleton with a conspiracy to distribute cocaine, came from Douglas.

Douglas testified that he was a convicted cocaine distribution conspirator and money launderer, and that the United States had promised to file a motion seeking a downward departure from his sentence if he cooperated in the case against Ms. Singleton. (Tr. Vol. IV, at 204-206.) He then testified that he had first come to Wichita, Kansas at the request of Ronald McClelland to make money selling drugs. (Tr. Vol. IV, at 207-208.) According to Douglas, for approximately two weeks he lived in the MacArthur Apartments in Wichita with McClelland, Eric Johnson, and Ms. Singleton. (Tr. Vol. IV, at 209.) During that time he observed Eric Johnson package cocaine; (Tr. Vol IV, at 210), he engaged with Eric Johnson in conversations about drugs, and Ms. Singleton was present when there were drugs in the apartment. (Tr. Vol. IV, at 211.) Douglas never saw Ms. Singleton sell drugs. (Tr. Vol. IV, at 212.)

Ultimately Douglas left Wichita; however he later returned, took up residence in the city and became part of a drug sales business operated by himself and McClelland. During his second trip to Wichita, he frequently saw Ms. Singleton in the presence of Mr. Johnson; however he never saw Ms. Singleton handle, package, or sell cocaine. (Tr. Vol. IV, at 222.) Douglas also explained how Western Union was used to wire transfer his drug sales money to California. (Tr. Vol. IV at 231-233.) Douglas offered no testimony that he had either observed Ms. Singleton in the possession of money representing

the proceeds from the sale of drugs or that he had observed her wire transfer drug money for any person.

On cross-examination Douglas testified that he had been convicted in California of shooting one Deander Brown. Douglas shot Brown as a result of a dispute over a car which cost $1,000.00. (Tr. Vol. IV, at 244-246.) Following his release from incarceration Douglas was ultimately convicted in Mississippi for conspiracy to sell cocaine. (Tr. Vol. IV at 248-248.) He also testified that he had entered into a plea agreement on charges in the present case so that the United States would intercede with the courts in Mississippi and seek a reduction in his sentence for distributing cocaine in that state. (Tr. Vol. IV, at 248-249.)

Douglas said that he had been interviewed by Detective Jacob, Special Agent McCormack, and others on numerous occasions both in Mississippi and Kansas. (Tr. Vol. IV, at 249-251.) Douglas indicated that he had lied to Jacob and McCormak on at least two occasions. (Tr. Vol. IV, at 252-253.) Not knowing that Douglas had lied, the United States entered into a plea bargain with him soliciting his help to convict, Ms. Singleton and others. (Tr. Vol. IV, at 252-254.) Douglas then admitted, again, that he had never seen Ms. Singleton sell cocaine. (Tr. Vol. I, at 261.) He also admitted that he had lied to the investigating officers when he had told them that Ms. Singleton had been used to transport cocaine to Kansas form California. (Tr. Vol. IV, at 281.)

SUMMARY OF ARGUMENT

Napoleon Douglas was the only witness whose testimony linked Ms. Singleton to cocaine and, by implication, money laundering. The government, through the United States Attorney's Office, offered Douglas something of value - the promise of a motion to reduce his sentence and assistance in reducing his sentence in Mississippi - in exchange for his testimony against Ms. Singleton. The government's conduct in that regard is prohibited by operation of Title 18 United States Code, Section 201(c)(2) and Rule 3.4(b) of the Model Rules of Professional Conduct as adopted by the State of Kansas by Kansas Supreme Court Rule 225, and effective from and after March 1, 1988. The testimony of Douglas should have been suppressed.

Secondly, the evidence linking Ms. Singleton to a conspiracy to distribute cocaine is insufficient for the jury to have found guilty beyond a reasonable doubt, and the Motion for Judgment of Acquittal should have been granted. Finally, the evidence of money laundering was likewise insufficient for the jury to have found guilt beyond a reasonable doubt, and the Motion for Judgment of Acquittal should have been granted.

ARGUMENT AND AUTHORITIES

I. The District Court Erred in Failing to Grant Appellant's Motion to Suppress the Testimony of Napoleon Ransom Douglas

A. Standard of Review

Ordinarily the standard of review of a motion to suppress is the clearly erroneous standard. *United States v. Griffin*, 7 F.3d 1512, 1516 (10th Cir. 1993). However, in the present case the motion to suppress was decided as a question of law, in which case the standard of review is *de novo*. *Pierce v. Underrwood*, 487 U.S. 552, 585, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988).

B. Defense Objection:

Prior to trail the defense filed a motion to suppress testimony in reliance upon 18 U.S.C. 201(c)(2) and Rule 3.4(b) of the Model Rules of Professional Responsibility. (Vol I, Doc. 135.) Following oral argument, and without the introduction of testimony, the District Court denied the motion finding that §201(c)(2) ". . . doesn't apply to the United States as I understand it". (Tr. Vol. I, at 5 and Tr. Vol. III, at 100-200.)

C. Discussion

Prior to the commencement of trial Ms. Singleton was advised that the government intended to offer the testimony of Napoleon Douglas. Ms. Singleton had reason to believe, and the evidence adduced at trial demonstrated, that the government had promised Douglas something of value in exchange for his testimony. Ms. Singleton believed that the prospective testimony was solicited and would be offered, by the government in violation of 18 U.S.C. 201(c)(2) and Rule 3.4(b) of the Model Rules of Professional Responsibility, as adopted by the State of Kansas effective March 1, 1988. Ms. Singleton filed a motion to suppress the testimony of Douglas on the theory that it was in the best interest of justice to suppress testimony so acquired, and that the failure to do so deprived her of fundamental fairness and due process of law. In her motion Ms. Singleton sought an order prohibiting the government from offering the testimony of Douglas, who was a "paid" witnesses. Argument was had on the motion but no testimony was taken. After hearing the argument, Judge Theis denied Ms. Singleton's motion holding, as a matter of law, that §201(c)(2) did not apply to the government. (Tr. Vol. II, at 5.)

The American judicial system has long recognized that there exists an inherent danger of untruthfulness in the paid "occurrence" witness. In criminal cases payment can take many forms, ranging from outright cash payments to promises of leniency in the government's treatment of the

"paid" witness. In reflecting upon the dangers of using paid witnesses in criminal cases, the Fourth Circuit Court of Appeals has written: "Obviously promises of immunity or leniency premised on cooperation in a particular case may provide a strong inducement to testify falsely in that case." *United States v. Meinster*, 619 F.2d 1041, 1045 (4th Cir. 1980).

It is a crime to pay a witness - other than an expert - for testifying. Title 18 United States Code, Section 201 addresses the issue of providing something of value to a witness in exchange for his testimony. The section provides in pertinent part that:

(c) Whoever -

> (2) directly or indirectly, **gives, offers or promises anything of value to any person, for or because of the testimony** under oath or affirmation given or to be given by such person **as a witness upon a trial**, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such persons absence therefrom;

shall be fined under this title **or imprisoned** for not more than two years or both.

18 U.S.C. 201(c)(2) (Emphasis added).

Section 201(c)(2) does not require that the offer be made with the intention of the offeror to influence the testimony of the witness. This conclusion is buttressed by the implication implicit in §201(d) which provides:

> (d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) and (3) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or , in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

18 U.S.C. 201(d). This conclusion has additional support. In *Golden Door Jewelry v. Lloyds*, the trial court, contrasting the requirement of corrupt influence contained within §201(b)(3) with the language

of §201(c)(2), found that:

> The plain language of §201(c)(2) does not distinguish between truthful or untruthful testimony. Moreover, the legislative history of §201(c)(2) is silent on whether Congress intended to make such a distinction. *See* S.Rep. No. 2213, 87th Cong., 2nd Sess. (1962), reprinted in 1962 U.S. Code Cong. & Admin. News 3852.

Golden Door Jewelry v. Lloyds, 865 F.Supp. 1516, 1523 (S.D. Fla. 1994). The *Golden Door* court further stated that: "**Section 201(c)(2)**, on the other hand, **does not require a corrupt mind**. It makes it a crime for anyone who: 'Directly or indirectly, gives offers or promises anything of value to a person, for or because of the testimony under oath or affirmation given by such person as a witness upon a trial, hearing or other proceeding, before any court . . ." *Id.* at 1523, (emphasis added). Accordingly; anyone, even one without a corrupt motive, who offers anything of value other than those considerations described in §201(d) to a potential witness in exchange for his testimony has committed a felony.

Despite this section of the United States Code which clearly prohibits and makes criminal the provision of anything of value to a witness in exchange for his testimony, the government, through the Department of Justice and the various United States Attorney's Offices, has a well established policy of providing witnesses with valuable consideration - things of value - in exchange for their testimony in criminal cases. It is not at all unusual for the government to promise leniency at sentencing, or to agree to accept a plea of guilty to a lesser charge, or to agree to file for a sentencing departure under §5K1 of the Sentencing Guidelines, or agree to intercede with the courts of the several states if the offeree agrees to cooperate and testify at the trial of others who stand accused of crimes. In fact, the Department of Justice has on several occasions paid substantial sums of money to witnesses who testify. *See* J. Richard Johnston, *Paying the Witness*, Criminal Justice, Pages 21-22, Volume 11, Number 4, Winter 1977.

So common is the practice of offering things of value to witnesses for their testimony that prior

to trial Ms. Singleton believed that such promises had been Douglas. This belief was ultimately borne out by the testimony of Douglas when he admitted that in exchange for his cooperation the government had promised to seek a departure from his sentence for conspiracy and money laundering and that the government planned to ask the courts of Mississippi to reduce his sentence in that state.

Prosecution is appropriate for those who violate §201(c)(2). Can there be any doubt, if defense counsel began to offer things of value to occurrence witnesses, that the government would have a filed day announcing prosecutions of the defense bar? However; it is unrealistic to expect the government to prosecute Assistant Untied States Attorneys for violating §201(c)(2) when the courts have, over the years, been liberal in allowing the testimony of witnesses who have been "paid." For example, in *United States v. Dailey*, 759 F.2d 192 (1st Cir. 1985), the court allowed the testimony of an accomplice of the accused who had entered into a plea agreement with the government which was contingent upon his cooperation as a witness. In *United States v. Grimes*, 438 F.2d 391 (6th Cir. 1971) the testimony of a government informer who had participated in the offence was admitted despite the fact that the informer was to be pad a fee for his testimony which was contingent upon a conviction. The accused in those cases challenged the admission of such testimony without success. However, none of these challenges arose out of §201(c)(2).

Counsel for Ms. Singleton has been unable to find any cases in which representatives of the Department of Justice, Assistant United States Attorneys, or attorneys engaged in private practice have been prosecuted for violations of §201(c)(2). Generally, what prosecutions there have been were directed at witnesses who solicited bribes in exchange for their testimony in violation of §201(c)(3). In addition, counsel can find no criminal cases in which the admissibility of the testimony of a government witness was challenged on §201(c)(2) grounds.

Without regard to the paucity of cases involving §201(c)(2), it is clear that violations of the law

may not simply be ignored or swept under the rug in the interest of some supposed "greater good." While prosecution of the Assistant United States Attorney who offered valuable concessions to the "paid" witness Douglas is unlikely, there is a response appropriate to such conduct. As a result of the government's willful violation of §201(c)(2), the testimony of Douglas should have been suppressed. Suppression of testimony for violations of §201(c)(2) is not without precedent. There are civil cases in which sanctions have been imposed for violations of §201(c)(2) and corresponding violations of the various states' codes of ethical conduct.

The Eleventh Circuit Court, in *dicta* discussing the section, seems to be the only court to have made a distinction between truthful and untruthful testimony. The court indicated, also in *dicta* only and without citation, to precedent, that the section contemplated only false testimony. *United States v. Moody*, 977 F.2d 1420, 1425 (11th Cir. 1992). Other courts have not seen the need to read the requirement of untruthfulness into the statute. In *Hamilton v General Motors Corp.*, 490 F.2d 223 (7th Cir. 1973) the court discussed generally the prohibition against contracting to pay fact witnesses anything above what is allowed by statute. The *Hamilton* court, citing prior cases and referencing both 18 U.S.C., 201(i),the predecessor to §201(c)(2),and the common law, wrote that contracts to pay fact witnesses more than what is allowed by statute are "against public policy," and are "against the spirit of the constitution." The court went on to note that the "tendency to evil consequences is apparent." *Id*. at 227-29.

If purchased testimony is looked at askance by the civil courts, what measures then have been taken to protect against it? In *Golden Door, w*hile the court was unable to determine that the purchased testimony was untruthful, it resolved the issue by looking at the ethical standards placed upon attorneys. The court concluded that the payments to the witness for fact testimony are clearly prohibited by Rule 4-3.4(b) of the then Rules of Professional Conduct. The court further concluded

that this was the case without regard to the truth of falsity of the testimony. The court sanctioned the party offering the purchased testimony by excluding all of the testimony. *Golden Door Jewelry*, 865 F. Supp. at 1524-27.

Both Kansas and American Bar Association have ethical rules which prohibit payments to fact witnesses. The Model Rules of Professional Conduct, adopted by the State of Kansas on or about March 1, 1988, provide as follows: "A lawyer shall not: (b) falsify evidence, counsel or assist a witness to testify falsely, **or offer an inducement to a witness that is prohibited by law**." Rule 3.4(b) (emphasis added). The Comment to Rule 3.4(b) states:

> With regard to paragraph (b), it is not improper to pay a witnesses' expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that **it is improper to pay an occurrence witness any fee for testifying** and that it is improper to pay an expert witness a contingent fee.

(Emphasis added.) It has been further stated that:

> (The Rule) bars lawyers from offering inducements to a witness that are "prohibited by law," which undoubtedly goes beyond bribery. Similar statutory and common law prohibitions exist in one form or another in every jurisdiction. It is well established, for example, that witnesses may not be paid a fee for telling the truth, for that is their duty in any event.

Hazard and Hodes, *The Law of Lawyering: A Handbook of the Model Rules of Professional Conduct 2d*, at 632. (Note also that §201(d) sets out and defines those things of value which may be provided to a witness.)

The Assistant United States Attorneys who handled the present case are members of the bar of the State of Kansas. They, just as is counsel for the defense, are subject to the Kansas Supreme Court Rules relating to the discipline of attorneys. The government violated Rule 3.4(b), and it was clearly within the power of the District Court to impose sanctions against the government for the violation of the Kansas disciplinary rules. The appropriate sanction to be applied in the present case is to prohibit the government from offering the testimony of any witnesses to whom it has promised

or delivered, anything of value. By the same token, it was within the power of the District Court to exclude the testimony of Douglas because it had been procured in violation of §201(c)(2).

Promises of leniency are strong inducements to testify falsely. *United States v. Meinster*, 619 F.2d at 1045. The use of purchased testimony is not only unethical, it is unlawful and dangerous. While the courts have been willing to admit the testimony of "paid" witnesses over challenges arising other than out of §201(c)(2), the courts have also recognized that the government's paying witnesses and offering reduced sentences in exchange for testimony breaches established ethical standards and "patently permits perversion of the trial process." *U.S. v Cervantes-Pacheco*, 826 F.2d 310, 315-15 (concurring opinion) (5th Cir. 1987.)

Over the passage of time the courts have become more and more willing to allow the admission of the paid testimony of occurrence witnesses. An interesting discussion of this process can be found in *United States v. Cervantes - Pacheco*, 826 F.2d 310 (5th Cir. 1987). It appears that the courts, with the encouragement of the Department of Justice, have all to willingly accepted the testimony of paid occurrence witnesses as a method of fighting the war on drugs. The ends, convicting drug lords, have come to justify the means - the use of the paid testimony of criminals. This has resulted in a coarsening of the trial process which has come to match the coarsening which occurred in general.

By presenting these "paid" witnesses, the government provides them with a mantle of credibility, reliability, and respectability. It is then assumed by the courts that, through the process of vigorous cross examination, the reliability and veracity of the paid witness can be challenged and the jury will be able to divine the truth.

When the government offers the paid testimony of a admitted and convicted felon, it enters into a compact with evil. The result is the ultimate erosion of respect for government which all people must have in order to maintain a free society. The courts should not allow the law to be used to aid the

government in this process.

Justice Brandeis recognized this danger and foreshadowed it in 1928, when he wrote:

> The court's aid is denied only when he who seeks it has violated the law in connection with the very transaction as to which he seeks legal redress. Then aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination . . .
>
> Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example . . .To declare that in the administration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.

Olmstead v. United States, 277 U.S. 438, 484, 48 S.Ct. 564, 574-75, 73 L.Ed. 944 (1928) (Brandeis, J., dissenting) (footnote omitted).

If the government breaks the law in an attempt to secure a conviction, as it has in the present case by its violation of §201(c)(2), it is the province and the duty of the courts to say, "No, this cannot be." This court has the enviable duty of protecting the government from itself. As Justice Brandeis recognized, in a free democratic society, the end may never justify the means.

When the government allies itself with criminals, when the ends of fighting the war on drugs

justifies the means of the fight, is it then any wonder that the people no longer respect the government, the law, or the United States? By granting Ms. Singleton's motion for sanctions, this court strikes a blow which promotes confidence in the administration of justice.

The government has not paid heed to Justice Brandeis. It has ignored his warning and it continues to argue that the only way to secure convictions of organized criminals, conspirators, and others is to make deals with other criminals. It believes that in order to triumph over lawbreakers it must embrace lawbreakers. Things of value have regularly been given to "paid" witnesses to secure their cooperation and testimony. Prior criminal conduct is regularly overlooked. And it had gotten worse.

In the case of John Gotti, the reputed boss of the former Gambino crime family, the government relied primarily on the testimony of a mass murderer, Gotti's lieutenant and co-defendant Slavatore "Sammy the Bull" Gravano (spelling approximate). Gravano - hardly an alter boy - an admitted multiple murdered and organized crime soldier, was offered valuable considerations by the United States in order to induce him to testify against Gotti. Gravano accepted the offer, testified, and Gotti was convicted. Now Gravano has written a book about his experience, and the government is assisting him in retaining the royalties. Was Gotti a modern day godfather? Quite possibly. Is society worsened by the governments embrace of the mass murderer Gravano? Undoubtedly!

In the motion picture *Batman*, the Joker, asked his victims, "Ever dance with the devil in the pale moonlight?" The United States dances that dance every time it offers valuable considerations to criminals to induce them to "cooperate." The government clutches to its bosom and wraps the flag about criminal "paid" witness.

Douglas was just such a "paid" criminal witness. The courts have long recognized that paid testimony is not particularly trustworthy and "patently permits perversion of the trial process." *U.S.*

v Cervantes-Pacheco, 826 F.2d 310, 315-15 (concurring opinion) (5th Cir. 1987.) Congress too recognized this danger and as a bulwark against mischief which can arise out of the paid witness, passed §201(c)(2), which clearly prohibits the use of paid testimony. The drafters of the Model Rules of Professional Conduct recognized the danger of the paid witness and adopted Rule 3.4. Juries, on the other hand are unsophisticated in the ways of the war on drugs, and do not always fully understand the inherent lack of trustworthiness of the paid testimony offered by the government.

In the present case Douglas, a paid witness who had admittedly lied to the government up to the day of the trail, was presented by the government as a witness against Ms. Singleton. The value he received for his testimony was the assistance of the United States in seeking to reduce his various prison sentences. His testimony was solicited and offered by the government in clear violation of the prohibitions of §201(c)(2) and Rule 4.3 of the Model Rules of Professional Conduct as adopted by the Kansas Supreme Court.

The District Court erred in admitting the testimony of Douglas over the objection of Ms. Singleton. The testimony of the "paid" witnesses should not be submitted to any jury and it should not have been submitted to this jury. The testimony should have been stricken, and had it been there would have been no evidence that Ms. Singleton may have been involved in a cocaine conspiracy or money laundering. Her convictions for conspiracy to distribute cocaine and money laundering should be overturned.

II. The District Court Erred in Not Granting the Defense Motion for Judgment of Acquittal on the Charge of Conspiracy to Distribute Cocaine Based Upon the Insufficiency of the Evidence

A. Standard of Review

The appellate court views denial of a motion for judgment of acquittal based upon insufficiency of the evidence using a de novo review of the record. *United States v. Torres*, 53 F.3d 1129, 1135

(10th Cir. 1995.)

B. Defense Motions

The defense moved for judgment of acquittal at the end of the governments evidence, (Tr. Vol. V, at 341) and at the conclusion of the case upon written motion. (Vol. I, Doc. 154.)

C. Discussion

The Tenth Circuit Court of Appeals follows the waiver rule, which provides;

> (A) defendant who move(s) for a judgment of acquittal at the close of the government's case must move again for a judgment of acquittal at the close of the entire case if he thereafter introduces evidence in his defense because by presenting such evidence, the defendant is deemed to have withdrawn his motion and thereby to have waived any objection to its denial."

United States v. Cox, 292 F.2d 1511, 1513 (10th Cir. 1991). In the present case the defense filed a motion for judgment of acquittal. However; if and to the extent that the filing of the motion does not satisfy the rule, any waiver of objection "does not alter the appellate standard of review, which remains an independent review of the legal question of sufficiency. *United States v. Bowie*, 892 F.2d 1494, 1497 (10th Cir. 1990) citing 2 S. Childress & M. Davis, *Standards of Review*, Section 9.11, at 65 & Section 9.12 (1986).

> The test is this: on the basis of the whole record, "(t)he evidence -both direct and circumstantial, together with the reasonable interferences to be drawn therefrom- is sufficient if, when taken in the light most favorable to the government, a reasonable jury could find the defendant guilty beyond a reasonable doubt.'"

Id.

A motion for judgment of acquittal is properly denied if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed2d 560 (1979). However, "(t)he evidence presented to support the conviction must be substantial; that is, it must do more than raise a mere suspicion of guilt." *United States v. Sanders*, 928 F.2d 940, 944 (10th Cir.) *cert*. denied, 501 U.S. 845, 112 S.C. 142, 116

L.Ed.2d 109 (1991). The appellate court may not decide upon the credibility of witnesses, although viewing the evidence in a light most favorable to the government allows the appellate court to assume that the jury found the government's evidence to be credible. *United States v. Torres*, 53 F.3d at 1134.

With respect to the conspiracy charges against the defendant, the government's principal witness was Douglas. He had originally been indicted as a co-conspirator with the defendant on the conspiracy charge and he had been indicted on other counts of money laundering. In exchange for promises of leniency made by the government, Douglas plead guilty to all charges against him, and agreed to cooperate with the government.

The testimony of Mr. Douglas, with respect to Ms. Singleton was, in sum and substance, as follows:

A. Douglas was called to Wichita by defendant Ronald McClelland, for the purpose of engaging in the enterprise of selling cocaine. (Tr. Vol. IV, at 208.)

B. Douglas and McClelland in the apartment occupied by the defendant Singleton and her boyfriend, Eric Johnson. (Tr. Vol. IV, at 209.)

C. While in Wichita Douglas observed Johnson in possession of cocaine, he observed Johnson packaging cocaine, he observed Johnson selling cocaine, and he observed Johnson in possession of funds which he (Douglas) believed were derived from the sale of cocaine. (Tr. Vol IV, at 211.)

D. Douglas never observed the defendant Singleton packaging or processing cocaine, he never observed Singleton sell or assist in the sale of cocaine, and he never observed Singleton in possession of money which was derived from the sale of cocaine. He did indicate that he saw Singleton "handle" cocaine "at the request of" Johnson. (Tr. Vol. IV, at 212.)

E. While continuing to deny that he and McClelland ever entered into either an agreement or conspiracy with Johnson or Singleton for the purpose of selling or acquiring cocaine, Douglas stated that on occasion Johnson, not Singleton, assisted him (Douglas) and McClelland in locating a supply of cocaine, that Johnson, not Singleton, taught him (Douglas) and McClelland how to package and transport cocaine, that he (Douglas) and McClelland kept their supply of cocaine separate from Johnson's supply of cocaine, that he (Douglas) and McClelland sold drugs to some of the same customers that Johnson sold to, and, on occasion, he (Douglas) and McClelland used one of the same couriers

that Johnson had used in his cocaine operation; and that he (Douglas) and McClelland never shared profits from the sale of cocaine with either Johnson or Singleton. (Tr. Vol. IV, at 236 and 242.)

G. The government presented the testimony of Mr. Keckler, an expert in known document analysis. Mr. Keckler testified that Ms. Singleton had been the

person who signed several of the wire transfers, and that she had signed the name of Crystal Singleton to Exhibit 11, a wire transfer which served as the basis of Count 21. (Tr. Vol. III, at 179-189.)

L. Crystal Singleton testified for the defense. She told the jury that it was she, and not Sonya Singleton, who has wire transferred the money referred to in Exhibit 11, and that it was she who signed her name to the exhibit. (Tr. Vol. V, at 349-347.)

Ms. Singleton was charged with conspiracy to distribute cocaine. The essence of a drug conspiracy is an agreement between two or more persons to commit federal drug offenses. The evidence, whether direct or circumstantial, "must support a finding that the conspirators had a unity of purpose or a common design or understanding." *United States v. Staggs*, 881 F.2d 1546, 1550 (10th Cir. 1989.) To sustain a conviction for conspiracy, the government must cumulatively ". . . prove [1] that two or more persons agreed to violate the law, [2] that the defendant knew at least the essential objectives of the conspiracy, [3] that the defendant knowingly and voluntarily became a part of it, and [4] that the alleged conspirators were interdependent." *Staggs, Id.*, citing *United States v. Angulo-Lopez*, 7 F.3d 1506, 1510 (10th Cir. 1993). The United Sates failed to prove the elements of the conspiracy. The only evidence with regard to Ms. Singleton's involvement in any conspiracy to distribute cocaine was provided by Douglas. Other than the testimony of Douglas the government had no evidence of Ms. Singleton's involvement in any conspiracy.

Viewing Douglas's testimony in a light most favorable to the government, Ms. Singleton was present when cocaine was packaged by her boyfriend at the apartment on South Hydraulic. Mere presence at a crime scene is itself, not sufficient to prove the crime of conspiracy to distribute cocaine.

U.S. v Savaiano, 843 F.2d 1280 (10th Cir. 1988) *certiorari* denied 109 S.Ct. 99, 488 U.S. 836, 102 L.Ed.2d 74. Viewing the evidence in a light most favorable to the government, there is an absence of evidence from the record that Ms. Singleton was ever present when Johnson sold cocaine. (Douglas testified that he had no first hand knowledge of such an event and he had never observed Ms. Singleton being present when cocaine was sold.) Mere presence at the scene of an alleged transaction or event is insufficient to prove conspiracy to distribute drugs. *U. S. v Casto*, 889 F.2d 562 (5th Cir. 1994) *certiorari* denied 110 S.Ct. 1164, 493 U.S. 1092, 107 L.Ed.2d 1067. Viewing Douglas's testimony in a light most favorable to the government, Ms. Singleton associated with others who were involved in the sale of cocaine, however mere association will not support conviction. *U. S. v. Casto*, *Id.*

The only evidence which the government introduced concerning Ms. Singleton's involvement with cocaine, was the fact that she was present when Eric Johnson, her boyfriend, live- in lover, and the father of her child, packaged cocaine and discussed cocaine with Douglas and McClelland. With respect to the question of conspiracy to distribute cocaine, the government has insufficient evidence, even when viewed in a light most favorable to it, upon which to convict Ms. Singleton. It consists entirely of the statement of Douglas that Ms. Singleton was present in her apartment while Mr. Johnson packaged cocaine. There is no evidence that cocaine was sold by Johnson, Singleton, Douglas or McClelland from the apartment. There is no evidence that Ms. Singleton assisted in selling cocaine, or that she sold cocaine. There is no evidence that proceeds from the sale of cocaine were ever delivered to Ms. Singleton.

There is absolutely no evidence that Ms. Singleton entered into an agreement with anyone to violate the law by selling cocaine. There is likewise no evidence that Ms. Singleton knowingly became a part of a conspiracy to distribute cocaine. Mere presence at the scene of a crime is insufficient to convict of conspiracy to distribute cocaine. (See *U.S. v Savaiano*, 843 F.2d 1280 and *U. S. v Casto*,

889 F.2d 562.) Accordingly two of the elements necessary to support a conviction for conspiracy as required by *Staggs* and *Angulo-Lopez* are conspicuously absent.

The evidence offered at Ms. Singleton's trial was not sufficient for the jury to find her guilty beyond a reasonable doubt. The ruling of the District Court must be overturned.

III. The District Court Erred in not Granting the Defense Motion for Judgment of Acquittal on the Charges of Money Laundering Based Upon the Insufficiency of the Evidence

A. Standard of Review

The appellate court views denial of a motion for judgment of acquittal based upon insufficiency of the evidence using a de novo review of the record. *United States. Torres*, 53 F.3d 1129, 1135 (10th Cir. 1995.)

B. Defense Objection

The defense moved for judgment of acquittal at the end of the governments evidence, (Tr. Vol. V, at 341) and at the conclusion of the case upon written motion (Vol. I, Doc. 154).

C. Discussion

As stated, the Tenth Circuit Court of Appeals follows the waiver rule, which provides;

that a defendant who moves for judgment of acquittal at the close of the governments case must so move again if he introduces evidence on his behalf, or the motion is deemed waived. *United States v. Cox*, 292 F.2d at 1513 (10th Cir. 1991). Ms. Singleton filed a motion for judgment of acquittal which should satisfy the rule; however if such a motion does not satisfy the requirement, any waiver of objection "does not alter the appellate standard of review, which remains an independent review of the legal question of sufficiency. *United States v. Bowie*, 892 F.2d at 1497.

To maintain a charge of money laundering, it is incumbent upon the government to show that:

> (1) the defendant took part in a financial transaction; (2) the defendant knew that the property involved in the transaction involved the proceeds of illegal activity; (3) that the property involved was in fact the proceeds of that illegal activity; and (4) the

> defendant knew that the transaction was designed in whole or in part to conceal or disguise the nature, source, location, ownership, or control of the illegal proceeds. 18 U.S.C. §1956(a)(1); *U.S. v. Garcia-Emanuel*, 14 F.3d 1469, 1473 (10th Cir. 1994)

U.S. v. Ruiz-Castro, 92 F.3d 1519, 1531 (10th Cir. 1996.) In ruling upon the sufficiency of the evidence the court "must look at all the evidence, both direct and circumstantial, together with the reasonable inferences to be drawn therefrom in a light most favorable to the government to determine whether a reasonable jury could find the defendant guilty beyond a reasonable doubt. *United States v. Ratchford*, 042 F.2d 702, 703 (10th Cir. 1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 1185, 117 L.Ed.2d 427 (1992)." *U.S. v. Levine*, 970 F.2d 681, 684 (10th Cir. 1992).

But note that the evidence presented must be substantial.

> [T]he evidence both direct and circumstantial, together with reasonable inferences to be drawn therefrom, is sufficient if, when taken in the light most favorable to the government, a reasonable jury could find the defendant guilty beyond a reasonable doubt. Further, **the evidence presented must be substantial**; that is **it must do more than raise a mere suspicion of guilt.** *United States v. Sanders*, 928 F.2d 940, 944 (10th Cir.) (internal quotations and citations omitted), *cert denied*, ___ U.S. ___, 112 S.Ct. 142, 116 L.Ed.2d 109 (1991).

U.S. v. Garcia-Emanuel, 14 F.3d 1469, 1472 (10th Cir. 1994) (emphasis added). In the present case the evidence concerning the possibility of Ms. Singleton's guilt on money laundering charges is not substantial.

The only direct evidence concerning Ms. Singleton and cocaine came from Douglas. He testified that during his first visit to Wichita Ms. Singleton was present when drugs were also present and when drugs were being discussed by Douglas, Johnson and McClelland.. (Tr. Vol. IV, at 211.) However Douglas admitted that, during that two week period, he never saw Ms. Singleton sell drugs. (Tr. Vol. IV, at 212.) The government then had Douglas describe his contacts with Ms. Singleton and Eric Johnson during Douglas's return to Wichita. He testified that he stopped by Ms. Singleton's

residence, “from time to time.” He further testified that Eric Johnson was in the business of selling cocaine. (Tr. Vol. IV, at 215.)

On cross examination Douglas admitted that he had never seen Ms. Singleton sell cocaine. (Tr. Vol. IV, at 261.) With the exception of Ms. Barbara Johnson and Ms. Crystal Singleton, Douglas was the only other person who testified during the case about his observations of Ms. Singleton in the presence of Mr. Johnson. In some 93 pages of testimony Douglas does not once mention Ms. Singleton selling drugs, or being present when Mr. Johnson sold drugs. He offered no evidence as to whether or not Mr. Johnson ever delivered the proceeds of drug sales to Ms. Singleton to be wire transferred to California.

Following the testimony of Douglas, Agent McCormak testified again. He admitted he had no direct knowledge of Ms. Singleton selling cocaine. (Tr. Vol. V, at 375.) The government presented no evidence to support its allegation that Mr. Johnson gave money from the sale of cocaine to Ms. Singleton to be wire transferred. (Agent McCormak admitted, albeit grudgingly, that neither he nor Detective Jacob had any evidence to show that Johnson had given Ms. Singleton any money to be wire transferred. (Tr. Vol. V, at 377-308.))

The evidence offered by the government with respect to the charges of money laundering is not substantial. Certainly its expert witnesses testified that Ms. Singleton’s handwriting was on the wire transfer orders and one or two of the receipt orders.[1] However at no place in the evidence adduced by the government is there any evidence sufficient to prove that Ms. Singleton ever wire transferred proceeds from unlawful activity.

[1]Christal Singleton testified for the defense. She admitted that it was she and not Ms. Sonya Singleton who had wire transferred the money to California which is alleged as money laundering on

In order to convict Ms. Singleton of money laundering the government had to prove that Ms. Singleton (1) took part in a financial transaction; (2) that she knew that the property involved was the proceeds of illegal activity; (3) that the property was in fact proceeds of illegal activity; and (4) that she knew that the transaction was designed to conceal, either in whole or in part, the nature, source, location, ownership or control of the proceeds. *U.S. v. Ruiz-Castro*, 92 F.3d, 1519, 1531. There is an absence from the record of any evidence concerning from whom Ms. Singleton received the money which she is alleged to have laundered. Assuming *arguendo*, that Ms. Singleton did indeed wire transfer money as alleged in the Superseding Indictment, there is no evidence that the money she wired is in fact the proceeds of illegal activity. The third element required by *Ruiz-Castro* is missing from the case against Ms. Singleton.

There is conjecture as to the origin of the money transferred. However, conjecture, inference and suspicion, even when viewed in a light most favorable to the government, is not substantial evidence as required by *U.S. v. Garcia-Emanuel*, 14 F.3d. at 1472.

On the basis of the entire record of the case, the evidence both direct and indirect, and the inferences to be drawn therefrom, taken in a light most favorable to the government as required by *United States v. Bowie*, 892 F.2d at 1494, there is insufficient evidence to sustain Ms. Singleton's convictions on the charges of money laundering. The convictions should be dismissed.

CONCLUSION

For the reasons set forth herein, the appellant, Sonya Singleton, requests that this court vacate and reverse her convictions of conspiracy to distribute cocaine and money laundering, and remand the

---

the part of Ms. Sonya Singleton in Count 21 of the Superseding Indictment.

case to the District Court for further proceedings, and for such other and further relief in the premises as is just under the circumstances.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested on behalf of the appellant Sonya Singleton. The transcript, while not excessive, is convoluted. Ms. Singleton has raised issues of an evidentiary nature. It is submitted that the presence of counsel at oral argument will be of assistance to the court in locating or determining the existence or absence of facts which could support or detract from the arguments presented.

Respectfully submitted,
KLENDA, MITCHELL, AUSTERMAN
& ZUERCHER, L.L.C.

By:___________________________________

John V. Wachtel, #08310
301 North Main, 1600 Epic Center
Wichita, Kansas 67202-4888
(316) 267-0331
Attorney for Sonya Evette Singleton

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the ___ day of August, 1997 true and correct copies of the above and foregoing Brief of Appellant was served upon the United States, by depositing a copy of the same in the United States Post Office, postage pre-paid, and addressed to:

Penelope Y. Cassell,
Assistant U.S. Attorney
Jackie N. Williams,
U.S. Attorney
1200 Epic Center, 301 North Main
Wichita, Kansas, 67202-4888

and the original and seven copies were mailed to:

Tenth Circuit Court of Appeals
Office of the Clerk
Byron White United States Courthouse
1823 Stout St.
Denver, Colorado 08257

____
John V. Wachtel